

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4721 of 1996

to

FIRST APPEAL No 4737 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DY COLLECTOR & SPECIAL LAND ACQUISITION OFFICER

Versus

VADANSINH GAMANSINH

Appearance:

MR SJ DAVE, AGP for Appellants

MR BJ SHELAT FOR MR.UDAYAN P VYAS AND MR.MS DESAI,
for Respondents

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 02/04/98

ORAL COMMON JUDGEMENT [PER : Y.B.BHATT, J]

These appeals have been filed on behalf of the State of Gujarat under Sec.54 of the Land Acq. Act read with Sec.96 of C.P.Code, wherein the appellants have challenged the common judgment and awards passed by the Reference Court under Sec.18 of the said Act. The pertinent facts in brief which are not disputed, are as under:-

2. The lands in question were acquired for Dharoi Project and are located in village Santoda, Tal: Kheralu, Dist.: Mehsana. Notification under Sec.4 of the said Act is dated 23.5.1973. Spl. Land Acq. Officer, by his award dated 15.3.1975, awarded the market value in respect of the acquired lands at the rate of Rs. 3300/ per Acre for irrigated lands, Rs. 2300/ per Acre for non-irrigated lands and Rs. 40/ per Acre for Kharaba lands. The respondents-claimants not having accepted the award, preferred references under Sec.18 of the said Act wherein they claimed the market value at the rate of Rs.42000/ per Acre. After going through the prescribed procedure, recording evidence and giving opportunities to the parties, the Reference Court determined the market value of the acquired lands at a flat rate of Rs. 5/ per sq.mt. (Rs. 500/ per Acre), as per the impugned judgment.

3. The State of Gujarat, being aggrieved by the aforesaid determination of the market value on the part of the Reference Court, has preferred these appeals, substantially for a reduction in the market value of the said lands.

4. We have heard the ld. counsel for the appellants as also the ld. counsel for the respondents on merits. We have also perused the relevant evidence to which our attention has been drawn. As a result of the hearing and discussion, it appears that the main bone of contention appears to be the treatment meted out by the Reference Court, which is particularly discussed in paras 11 & 12 of the impugned judgment. Particular emphasis has been laid on the observations made by the Reference Court and the conclusions drawn by it specifically discussed in para-12 of the impugned judgment. Particular reference has been made by the Reference Court to awards produced at Exh.53 & 54. A further reference has been made to a Division Bench decision of this Court in First Appeal Nos. 1365/91 (group). From the discussion in para-12, it would appear that the Reference Court has accepted the market value as determined by this Court in the aforesaid decision, and that the Reference Court has blindly accepted the same and has determined the market value at

Rs. 5/ per sq.mt. simply because that is the market value as determined down in the said decision. To our mind, this is over-simplistic approach. Decisions of this Court must be read and understood in the context of all the relevant facts, and such decisions cannot be applied merely by adopting the market value determined by this Court, irrespective of any significant and/or material distinction on facts. We shall discuss the scope and effect of this decision together with other decisions of this Court hereinafter.

5. However, before we embark into the arena of determination of the market value, we may observe at this stage that otherwise, there does not appear on record any other substantive evidence on which the Reference Court could have based its determination of the market value. Although the claimants have, in fact, led some evidence on the agricultural yield obtained from the lands under acquisition, it appears that the facts and figures asserted by the claimants on this aspect are mere oral assertions found in their deposition and are not supported by any reliable documentary evidence. It, therefore, appears logical that the Reference Court has rightly not chosen to adopt the capitalisation method based on the net annual agricultural yield.

6. In view of the peculiar facts and circumstances of the case, we do not propose to adopt the normal and usual procedure of remanding the matter back for additional evidence and further evidence, particularly in view of the decision of the Supreme Court in the case of K. Krishna Reddy, reported at AIR 1988 SC P.2123. In paras 11 & 12 of the said decision, the Supreme Court has clearly laid down the principle that the appellate Court, while dealing with an appeal under Sec.54 of the said Act, should as far as possible, avoid orders of remand since this necessitates not only additional expenditure of time and money, but also because it puts the original claimants to considerable hardships, and is also likely to lead to a further appeal from the judgment of the Reference Court after remand.

6.1 Under these circumstances, we propose to examine various other decisions of this Court with a view to ascertain whether they can furnish appropriate guidelines or a baseline for the purpose of determination of the market value of the instant lands.

7. Before we proceed to discuss the various decisions which may be relevant for this purpose, we note and observe that the various decisions which we propose

to take into consideration, which are discussed herein after, all pertain to the acquisition of lands for the very same purpose namely Dharoi Project, Sabarmati Reservoir Project, and that each of the said decisions is a decision on facts and merits and decided by a judgment and order. Further more, each of the said decisions pertains to the acquisition of the lands located in villages which are in close proximity to each other, and also to village Santoda with which we are presently concerned. There is no controversy on the facts that each of the decisions discussed herein after pertain to lands which are within the radius of approximately 10 to 12 kms. from village Santoda which is the subject matter of the present appeal. There is no dispute that all the lands which have been considered in the following decisions considered by us, are located in villages where the fertility of the lands is generally at par with the fertility of the lands of the instant village Santoda, and that no material distinction in the market value of the lands in question can be claimed and/or asserted on the basis of difference in fertility or difference in location or merely on account of the distance involved.

7.1 In view of these facts, we are of the opinion that the decisions discussed by us herein after, would certainly provide a guideline or an appropriate baseline on which we can legitimately determine the market value of the lands in question. This aspect, in principle, is not disputed by the ld. counsel for either side.

8. We shall now take up the different decisions for consideration :-

(i) First Decision :-

The first of the decisions we find relevant is the decision of this very Bench in First Appeal No.1035/94 (group) decided on 31.3.1998. This decision pertains to acquisition for the same project and of the lands located in village Babsar, which we are informed, is at a distance of about 10 to 15 kms. from the instant village Santoda. Further more, both the villages namely Babsar as also Santoda are at an equal distance from the river Sabarmati which flows between said two villages. In the said decision, we had determined the market value of the acquired lands of village Babsar at the rate of Rs.240/ per Are in the case of Bagayat land and at Rs. 200/ per Are in the case of Jirayat land. The relevant date of Sec.4 notification on the basis of which this market value was determined, is 2.8.1972.

(ii) Second Decision :-

This is a decision rendered by this Court in First Appeal No. 574/79 (group) whereby the lands of village Jambalpur (Champalpur) which is at a distance of approximately 15 kms. from the instant village Santoda. The High Court had, in this decision, determined the market value of the acquired land at Rs.225/ per Are with reference to the Sec.4 notification dated 29.7.1971.

(iii) Third Decision :-

This decision was rendered by a Division Bench of this Court in First Appeal Nos. 1365/94 (group) decided on 13.9.1995, and pertains to the acquisition of lands of village Pandva. This decision determines the market value of the acquired land at Rs. 5/ per sq.mt. (Rs. 500/ per Are) with reference to Sec.4 notification dated 13.11.1980. It is pertinent to note that this decision does not specifically deal with the acquisition for the identical project with which we are concerned, but some reference was made to the said decision since village Pandva and the instant village Santoda are within the distance of 10 to 15 kms. which we have taken to be the relevant zone of consideration.

(iv) Fourth Decision :-

This decision is rendered in First Appeal Nos. 1147/96 (group) decided on 28.2.1997 and deals with the acquisition of lands of village Chelana, but the acquisition is not for the same project with which we are concerned namely Dharoi Project. This decision determines the market value of the lands of village Chelana at Rs. 5/ per sq.mt. with reference to Sec.4 notification dated 8.6.1989.

(v) Fifth Decision :-

The next decision is rendered by this Court in First Appeal Nos. 586/94 (group) decided on 28.7.94 wherein the lands of village Kotda were acquired with reference to Sec.4 notification dated 13.10.1983. This decision also determines the market value of the lands of village Kotda at Rs. 5/ per sq.mt. (Rs. 500/ per Are).

(vi) Sixth Decision :-

This is a decision of the Division Bench of this Court in First Appeal Nos. 1645/95 (group) decided on

22.7.1996. It pertains to the acquisition of lands of village Bhanpur for the same project namely Sabarmati Reservoir Project, wherein the market value has been determined at Rs. 220/ per Acre for irrigated land and Rs. 200/ per Are for non-irrigated land with reference to Sec.4 notification dated 3.9.1971.

(vii) Seventh Decision :-

This is another decision in First Appeal No. 4390/95 (group) decided on 30.8.1996 dealing with the acquisition of lands of village Jitpur and acquired for the same project wherein the market value has been determined at Rs. 200/ per Are with reference to the notification under Sec.4 dated 22.7.1971.

9. This is a summary of various decisions to which our attention has been drawn and accordingly we propose to refer to each of these decisions for the purpose of our final consideration.

10. First of all we find, on the totality of consideration of all the decisions, that the third decision, fourth decision and fifth decision are not really relevant for our purpose, or atleast do not offer a useful and reliable guideline for determining the market value of the lands presently under consideration, mainly for two reasons. First, the purpose of acquisition was different in these decisions on one hand, and the purpose of acquisition under consideration by us in the instant group of appeals. The other reason is that the relevant notification under Sec.4 in the third, fourth and fifth decisions referred to above, were dated 13.11.1980, 8.6.1989 and 13.10.1983 respectively and each of these notifications is substantially and significantly later than the notification with which we are concerned namely 23.5.1973. The nearest notification is in decision no.3, and even so, it is more than seven years subsequent to the instant notification. Thus, the market value as determined in the third, fourth and fifth decision, in our view, would not have any substantial relevance looking to this time difference between the notifications.

11. On the other hand, the first, second, sixth and seventh decisions would be more relevant for our present purpose.

11.1 If we analyse these decisions in sequence of the relevant Sec.4 notifications, we find that the decisions should be rearranged so as to make the facts more

accurate and presentable.

11.2 The seventh decision, is the earliest in point of time with reference to notification date, that is to say, 22.7.1971, wherein the market value is determined at Rs. 200/ per Are. The next in point of time would be the second decision wherein Sec.4 notification is dated 29.7.1971 and the market value is determined at Rs. 225/ per Are. Then comes the sixth decision where Sec.4 notification is dated 3.6.1972 and the market value determined is at Rs. 200/ per Are and lastly, the first decision where Sec.4 notification is dated 2.8.72 and the market value determined is at Rs. 240/ per Are for Bagayat land and at Rs. 200/ per Are for Jirayat land.

11.3 On a comparison of these decisions i.e. first, second, sixth and seventh would indicate that the market value as determined by the Court, has increased from Rs. 200/ per Are on 22.7.1971 to Rs. 240/ per Are for Bagayat land and Rs. 200/ per Are for Jirayat land on 2.8.1972. These decisions, naturally, show a slight upward progress in the market value as determined on merits by different Benches, due to progression by lapse of time between the dates of Sec.4 notifications within a range of about a year and half. This is normal, natural and to be expected.

12. We also note with reference to the third, fourth and fifth decision, that the market value as determined under these decisions has stabilised at Rs. 500/ per Are on 13.11.1980 and has remained so atleast at that level up to 13.10.1983.

13. Thus, if we accept the determination of the market value in the aforesaid first, second, sixth and seventh decision, and make the requisite allowance for lapse of time as applicable to the instant notification, a uniform result which would be just and equitable would be achieved. Ld. counsel for the respective parties agree that this would be both a fair and practical method which can be adopted, looking to the peculiar facts and circumstances of the case and also looking to the paucity of reliable evidence on record of the instant Land Ref. Cases.

14. Thus, on the facts and circumstances of the case, since the instant notification namely dated 23.5.1973 is approximately 9 months subsequent to the notification in the first decision referred to herein above, it would be fair and just to award an increment at 7 1/2% for this lapse of time, which would be approximately 10% p.a. On

this basis, when the increment is computed and the resultant figure is rounded off, we arrive at a figure of Rs. 258/ per Are.

14.1 At this juncture, it may also be noted that the Reference Court has arrived at the market value at Rs.5/ per sq.mt. (Rs. 500/ per Are) mainly because it applied the market value determined by this Court in the third decision referred to herein above. We have already dealt with the various factors why decisions at Nos.3, 4 & 5 would not be reliable for the present purpose, and we therefore note that the same could not have been adopted by the Reference Court as a reliable instance.

14.2 At this juncture, it would be required to be noted that the lands have been uniformly valued by the Reference Court without any reference or distinction as to the category of lands, as to whether they were irrigated, non-irrigated or kharaba lands. We find that the Reference Court has done so because it has accepted the evidence of the claimants that all the lands in question were irrigated lands. It may be that some of the lands may have been shown as Kharaba lands in the revenue records. This however does not make any difference since it is well-settled law that entries in revenue records are mainly for fiscal purposes. Merely because a land is shown as Kharaba land, does not mean that factually it is incapable of being put to cultivation, or that if it is actually put to cultivation with irrigation facilities, the same would not yield a reasonable measure of agricultural crops. It is for this broad reason that we have adopted a uniform market value for all the acquired lands. Accordingly, we hold and direct that the lands under acquisition have a market value of Rs. 258/ per Are.

15. Another point raised by the counsel for the appellant State pertains to non-application of Sec.23(1-A) of the said Act. In this context, it is submitted that the Reference Court could not in law have awarded interest under this provision inasmuch as the relevant award is prior to 30.4.1982 which is the relevant date contemplated by the Amending Act which brought Sec.23(1-A) into effect. Since this legal position is by now well-settled in a number of Supreme Court decisions the ld. counsel for the respondents-original claimants fairly conceded that this addition to the compensation awarded by the Reference Court may be set aside. Accordingly, we set aside the same.

16. To conclude, therefore, the respondents- original

claimants shall be entitled to the compensation in respect of the acquired lands at the rate of Rs. 258/ per Are, and consequentially there will be a proportionate reduction in the amount of solatium and the interest awarded under Sec.28 of the said Act.

17. These appeals, therefore, partly succeed with no orders as to costs. Decree accordingly.

18. The Appellant State is directed to deposit in the Reference Court separately in each Land Ref. Case, the amount due to the claimants under the present decree within a period of four months of the drawing of the decree.

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